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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/092,560	03/08/2002	Ernesto E. Blanco	217395US25CIP	2081

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EXAMINER

HAN, MARK K

ART UNIT PAPER NUMBER

3767

DATE MAILED: 08/01/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/092,560

Applicant(s)

BLANCO, ERNESTO E.

Examiner

Mark K. Han

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 25 April 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-15, 17-20, 22-25, 27, 31-50, 91, 96-238 and 240-260 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) See Continuation Sheet is/are allowed.
- 6) ☒ Claim(s) See Continuation Sheet is/are rejected.
- 7) ☒ Claim(s) 145, 146, 218, 221, 227 and 260 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 8/17/04; 6/26/02; 3/8/02 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>2/6/06</u> . | 6) <input type="checkbox"/> Other: _____  |

Continuation of Disposition of Claims: Claims allowed are 5-15,17-20,22-25,27,31,34-50,91-112,119-121,127-142,148-150,153,156,157,159,160,162,164-211,231-235,245-248,253,254,256 and 257.

Continuation of Disposition of Claims: Claims rejected are 1-4,32,33,113-118,122-126,143,144,147,151,152,154,155,158,161,163,212-217,219,220,222-226,228-230,236-238,240-244,249-252,255,258 and 259.

## **DETAILED ACTION**

### ***Claim Objections***

1. Claims 240 and 241 are objected to because of the following informalities: These claims depend from cancelled claim 239. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-4, 32, 33, 113-118, 122-126, 143, 144, 147, 151, 152, 154, 155, 158, 161, 163, 212-217, 219, 220, 222-226, 228-230, 236-238, 240-244, 249-252, 255, 258 and 259 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,387,197 to Smith et al. (hereinafter “Smith”).

Smith discloses a handle 180, cylindrical penetrator 155, a substantially planar blade 160, guard 190, tissue expander 80, guard 196, spring 205 and side horn 135. See Figures 1-8.

### ***Allowable Subject Matter***

3. Claims 5-15, 17-20, 22-25, 27, 31, 34-50, 91-112, 119-121, 127-142, 148-150, 153, 156, 157, 159, 160, 162, 164-211, 231-235, 245-248, 253, 254, 256 and 257 are allowed.

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4. Claims 145, 146, 218, 221, 227 and 260 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Terminal Disclaimer***

5. The terminal disclaimer filed on 18 August 2005 disclaiming the terminal portion of any patent granted on this application which would extend beyond the expiration date of U.S. Patent Nos. 6,497,687, 6,716,201 and 6,719,746 has been reviewed and is accepted. The terminal disclaimer has been recorded.

***Contact Information***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mark K. Han whose telephone number is 571-272-4958. The examiner can normally be reached on Monday to Friday, 9 am to 5:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Sirmons can be reached on 571-272-4965. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

KEVIN C. SIRMONS  
SUPERVISORY PATENT EXAMINER

A handwritten signature in black ink, appearing to read "Kevin C. Sirmons", is written over the printed name and title.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Mark K. Han  
Patent Examiner  
Art Unit 3767

mkh  
July 23, 2006